

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/13/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-092980

FILED: _____

THOMAS E MUSHENSKI SR, et al.

THOMAS E MUSHENSKI SR
1414 E LAS COLINAS DR
CHANDLER AZ 85249-0000

v.

AMERICAN HOME SYSTEMS INC, et al.

AMERICAN HOME SYSTEMS INC
PO BOX 10898
GLENDALE AZ 85318-0000

TOM W KNAPP
PO BOX 10898
GLENDALE AZ 85318-0000
GRACE A MUSHENSKI
1414 E LAS COLINAS DR
CHANDLER AZ 85249-0000
CHANDLER JUSTICE COURT
REMAND DESK-SE

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

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The rules clearly require that a transcript of the record of the proceedings shall be prepared in all cases appealed to the Superior Court, except where other methods are established by Superior Court Local Rules.¹ When matters are not included in the record on appeal, the missing portion of the record is presumed to support the decision of the trial court.² However, even where no transcript is forwarded on appeal, this court is required to consider questions of law presented by the record.³ In the case at hand, Appellant did not order a record, nor did this court receive a transcript or tape of the proceedings from the court below.

Appellant claims the trial judge did not explain his ruling, though the trial judge did so in a minute entry. A request for a court's findings must be requested before trial, pursuant to Arizona Rules of Civil Procedure 52(a):

In all actions tried upon the facts without a jury...the court, if requested before trial, shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; ...Requests for findings are not necessary for purposes of review. ...It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or minute entry or memorandum of decision filed by the court...

¹ Rule 11(e)(2), Superior Court Rules of Appellate Procedure-Civil.

² *State v. Mendoza*, 181 Ariz. 472, 474, 891 P.2d 939, 941 (1995); *Baker v. Baker*, 183 Ariz. 70, 72, 900 P.2d 764, 766 (1995); *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982); *In re Mustonen's Estate*, 130 Ariz. 283, 284, 635 P.2d 876, 877 (App.1981).

³ *Smith v. Smith*, 115 Ariz. 299, 564 P.2d 1266 (App. 1977); *Orlando v. Northcutt*, 103 Ariz. 298, 441 P.2d 58 (1968).

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On the issue of sufficiency of evidence, Appellant contends that the trial judge ruled arbitrarily. However, a party has a duty to order and pay the costs of a transcript to the reviewing court if the party claims the trial court's ruling was not justified by evidence.⁴ Where no transcript or evidence is made part of the record on appeal, a reviewing court will not question the sufficiency of evidence to sustain the ruling.⁵

Finding no error,

IT IS ORDERED affirming the judgment and order of the Chandler Justice Court.

IT IS FURTHER ORDERED remanding this case to the Chandler Justice Court for all future and further proceedings.

⁴ Retzke v. Larson, 166 Ariz. 446, 449, 803 P.2d 439, 442 (1990); Rapp v. Olivo, 149 Ariz. 325, 330, 718 P.2d 489, 494 (App.1986); Rancho Pescado, Inc. v. Northwestern Mut. Life Ins. Co., 140 Ariz. 174, 189, 680 P.2d 1235, 1250 (App.1984).

⁵ American Exp. Travel Related Services Co., Inc. v. Parmeter, 186 Ariz. 652, 655, 925 P.2d 1369, 1372 (1996); Aguirre v. Robert Forrest, P.A., 186 Ariz. 393, 397, 923 P.2d 859, 863 (1996); Boltz & Odegaard v. Hohn, 148 Ariz. 361, 365, 714 P.2d 854, 858 (1985); Riley v. Jones, 6 Ariz.App. 120, 122, 430 P.2d 699, 701(1967).